IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2007

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A(NPD-S) Nos.145 and 868 of 2001

The Managing Director,
Tamilnadu State Transport Corporation,
(VPM DVN 1) Ltd.,
Villupuram. ... Appellant in C.M.A.No.868 of 2001 and
Respondent in C.M.A.No.145 of 2001

vs.

N.Balachandran ... Respondent in C.M.A.No.868 of 2001 and
Appellant in C.M.A.No.145 of 2001

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 17.10.2000 made in M.C.O.P.No.205 of 1998 on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge), Mayiladuthurai.

For Appellant in C.M.A.No.868/01 &
Respondent in C.M.A.No.145/01 : Ms.S.Geetha
for Mr.R.Balakrishnan

For Respondent in C.M.A.No.868/01 &
Appellant in C.M.A.No.145/01 : Mr.A.Muthukumar

C O M M O N J U D G M E N T

In an accident which occurred on 09.05.1998, the claimant sustained fracture of left leg, which was subsequently amputated. He claimed compensation of Rs.9,00,000/-. The Tribunal on evaluation of pleadings and evidence awarded compensation of Rs.1,85,000/- with interest at the rate of 12% per annum from the date of claim. Not satisfied with the quantum, the claimant has filed C.M.A.No.145 of 2001. The Transport Corporation, which was found vicariously liable for the accident caused due to the rash and negligent driving of the driver, filed C.M.A.No.868 of 2001, challenging the finding of the Tribunal regarding negligence and quantum. Therefore, both the appeals are taken up together and disposed of by a common order. For the sake of convenience, the parties are hereinafter referred to as the 'claimant' and the 'Transport Corporation'.

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2. The brief facts of the case are as follows :

(i) On 09.05.1998, the claimant boarded the bus owned by the Transport Corporation at Chidambaram to go to Sethiathope. When he was getting down from the bus, the driver of the bus suddenly started the bus, without noticing the passenger. The claimant fell down and the front wheel of the bus ran over his left leg, crushing the foot and the ankle. The claimant was immediately taken to Raja Annamalai Hospital, Chidambaram for first aid, from where he was taken to JIPMER Hospital, Pondicherry and was admitted on 09.05.1998. He was treated as inpatient. The effort by a team of Doctors, who tried to set right the crushed foot below ankle failed. The claimant's left leg was amputated below knee. He was discharged from JIPMER Hospital on 20.07.1998 and thereafter, treated as out-patient.

(ii) The Transport Corporation resisted the claim petition, contending inter alia that the bus was on its trip from Chidambaram to Aundimadam and it was driven cautiously by its driver. When the bus was turning slowly near Rajiv Gandhi statue at Sethiathope, Bazaar Street, the claimant without informing the driver or the Conductor attempted to get down from the moving bus. He lost his balance, fell down on the road, sustained injuries. The Transport Corporation contended that the accident had occurred only due to the fault of the claimant. The driver was not responsible for the accident and therefore, the Transport Corporation is not liable to pay any compensation.

(iii) The claimant examined himself as P.W.1. P.W.2 is a co-passenger. P.W.3 is the Doctor, who issued the Disability Certificate. One Anathakrishnan was examined as P.W.4. On the side of the claimant, Exs.P1 to P24 were marked. On behalf of the Transport Corporation, the driver of the bus was examined as R.W.1 and the Conductor was examined as R.W.2. The Tribunal on evaluation of pleadings and evidence found that the driver of the bus was responsible for the accident and awarded compensation of Rs.1,85,000/- with interest at the rate of 12% per annum.

3. Heard Mr.A.Muthukumar, learned Counsel appearing for the claimant and Ms.S.Geetha, learned Counsel for the Transport Corporation.

4. Learned Counsel for the Transport Corporation contended that the finding of the Tribunal that the driver of the bus should have taken proper care in the turning and that he should have seen as to whether any passenger is getting down or not is not sustainable. She further contended that the Tribunal ought not to have accepted the evidence of P.W.2, a co-passenger, who had stated in the First Information Report that he got down at Rajiv Gandhi Statue. Learned Counsel submitted that there is no bus stand near Rajiv Gandhi Statue and therefore, it is purely the fault of the claimant who got down from the moving bus at the turning and sustained injuries.

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5. Per contra, learned Counsel for the claimant submitted that when the claimant was alighting from the bus, the driver of the bus without noticing him started the bus, the claimant fell down and sustained injuries. He also invited my attention to the contents of the First Information Report, wherein P.W.2 has stated that he got down near Rajiv Gandhi Statue and before the claimant could get down, the driver has started the bus. Learned Counsel submitted that there is a clear recital in the First Information Report that the bus was started by the driver before the claimant could alight and therefore, it was the rash and negligent act of the driver which resulted in the accident.

Learned Counsel also drew my attention to the deposition of R.W.1, driver, who has stated that he had seen the claimant alighting from the bus through the side mirror. Whereas, R.W.2-Conductor has deposed that he has not seen the accident. Learned Counsel for the claimant stated that the evidence of the driver is not supported by any independent evidence, whereas the claimant has proved his case by letting in independent evidence through P.W.2.

6. Placing reliance on a decision reported in Venkatasami Motor Service vs. C.K.Chinnaswamy and others (1989 ACJ 371), learned Counsel for the claimant submitted that it is the responsibility of the crew to see that the passengers alight and board the bus safely. In paragraph 21 of the judgment, it is held as follows :

> "21. ... The life and limb of the passengers are to be borne in mind by the crew, namely, the driver and the conductor of a bus. It is not for merely mechanically driving the bus and for collecting the fares from passengers that both of them are employed in a bus. The driver of the bus has to look into both the entrances, front exit as well as rear exit, before actually starting the vehicle, even though whistle might have been given by the conductor inadvertently without noticing both exits due to the pressure of collection of fares from the passengers or due to his noting in the memo, as in the instant case before us. But the fundamental duty of both the driver as well as the conductor is to verify specifically whether any passenger is getting into the bus or getting down from the bus before actually the bus is moved from the bus stop where it is stopped, irrespective of the fact whether that place of stopping is a bus stop or not. ... "

Learned Counsel also relied on the judgment reported in Pallavan Transport Corporation Ltd., vs. M.Jagannathan (2001 (2) L.W. 103), in which, the Supreme Court in paragraph 6 has held as follows :

> "6. ... It is always important to have coordination between the conductor and the driver, whenever passengers start getting down or are led to get down, to see that before any signal is given by the Conductor, in any form, as normally there

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is bell in most of the buses which conductor rings signalling the driver to start the bus, the driver should not restart the bus. In the absence of coherence or lack of coordination between the two, it is bound to result into accident, which has happened in the present case. This would constitute negligence on the part of both the conductor and the driver. Once this evidence is accepted, which has been in this case, there is no scope to reassess the evidence in the present proceedings, about which attempt has been made, unless it can be said, that this finding is based on no evidence or is perverse. Learned Counsel for the appellant submitted with vehemence and attempted to take us to the evidence to show that there was no negligence on the part of the driver. However, as we have said, it is not proper for this Court to reassess the evidence and even if another view is possible, this Court would not do so in a proceeding under Article 136 of the Constitution of India. In the present case, we further find, as per evidence of P.W.1, that he was getting down from the front gate of bus, which is almost adjacent to the driver. If that be so, there is no difficulty for the driver to take this much of care, even if the version of R.W.1 is accepted, to restart the bus suddenly when the passengers were getting down...."

7. The oral testimony of the claimant is supported by the evidence of P.W.2, Co-passenger. If the evidence of an independent witness is cogent and unimpeachable in cross-examination, there is no reason to reject the same. First Information Report has also been registered against the driver of the bus. As against the evidence let in by the claimant, the driver of the bus, R.W.1 has

deposed that the claimant had alighted the bus in a turning, which is not supported by the evidence of the Conductor, who has admitted that he has not seen the accident.

It is evident that there is lack of co-ordination between the conductor and the driver of the bus. Claim petitions are decided on the basis of preponderance of probabilities and the evidence should not be scrutinised as is done in a civil suit or a criminal case. It is also a settled principle of law that it is not necessary to consider niceties and to dissect the evidence, to arrive at a conclusion. Test of negligence is only to find out whether the driver by exercising due care and caution and by exercising normal diligence could have averted the accident. If the evidence of an independent witness is cogent and unimpeachable in cross-examination, there is no reason to reject the same. The oral testimony is corroborated by the First Information Report. In the absence of any strong evidence let in by the Transport Corporation, rebutting the manner in which the accident has occurred, the finding of the Tribunal cannot be termed as a case of 'no evidence'. Therefore, the finding of the Tribunal regarding negligence is confirmed.

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8. Learned Counsel for the Transport Corporation contended that the award of Rs.1,00,000/- as against 70% disability is excessive. He also contended that Rs.30,000/- for pain and suffering is on the higher side.

9. The claimant, who was examined as P.W.1 has deposed that he was treated in Raja Annamalai Hospital, Chidambaram and thereafter, shifted to JIPMER Hospital, Pondicherry, where he was inpatient between 09.05.1998 and 20.07.1998. His left leg was amputated. Since the wound did not heal properly, he continued treatment as out-patient even thereafter. The claimant further deposed that at the time of accident, he was working as an Assistant Engineer in Public Works Department, Nagapattinam and due to amputation, he has lost his promotional chances. He also deposed that he had to take medical leave and also availed Earned Leave on loss of pay during the period of hospitalisation and further treatment.

P.W.3, Doctor, who has examined the claimant with reference to medical records on 02.07.2000 deposed that there was amputation and that the claimant is walking with artificial limb. He has further deposed that the claimant could not climb stairs, drive vehicle and do his day-to-day work as before. He has also deposed that the artificial limb has to be changed once in every 3 to 5 years. On his advice, the claimant has purchased one artificial limb. Since the device was heavy, the Doctor has advised the claimant to purchase an artificial limb of lesser weight. The disability certificate issued by the Doctor is marked as Ex.P23.

10. The contention of the learned Counsel for Transport Corporation that the award of Rs.1,00,000/- is excessive for 70% permanent disability is accepted. In view of the decision in M.Bhagavathy vs. Thiruvalluvar Transport Corporation reported in 2005 (5) CTC 745, the claimant is entitled to compensation of Rs.70,000/- as against 70% permanent disability.

11. The contention of the learned Counsel for the Transport Corporation that the award of Rs.30,000/- for pain and suffering is on the higher side is liable to be rejected for the reason that the claimant has suffered very serious injury of crushed foot and ankle beyond recognition. Due to the accident, the left leg of the claimant was amputated below knee. Further, he was also inpatient in the hospital for a considerable period of two months. The claimant would have experienced severe pain and suffering due to the injury of crushed foot and ankle at the time of accident, during the period of treatment and even after amputation. Considering the nature of injuries, period of hospitalisation and treatment, I find that the compensation of Rs.30,000/- for pain and suffering is inadequate and therefore, it is enhanced by a further sum of Rs.10,000/-.

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12. Ex.P10 is the receipt for Rs.25,000/- for purchase of endolight limb below knee at the cost of Rs.25,000/-. Placing reliance on Ex.P10 coupled with the evidence of P.W.3, Doctor, learned Counsel for the claimant submitted that the artificial limb has to be replaced once in 3 to 5 years and that therefore, the Tribunal ought to have awarded a reasonable amount towards future medical expenses, taking into account the increase in inflation.

In Nagappa vs. Gurudayal Singh and others reported in AIR 2003 SC 674, the Supreme Court in paragraph 23 has held as follows :

> "23. ... Therefore, in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalisation of the compensation proceedings. Hence, only alternative is that at the time of passing of final award, Tribunal/Court should consider such eventuality and fix compensation accordingly. No one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses. Future medical expenses required to be incurred can be determined only on the basis of fair guess-work after taking into account increase in the cost of medical treatment."

At the time of accident, the claimant was aged 51 years. The artificial limb was fitted in 1999 on the advice of P.W.3, Doctor and the cost of the artificial limb in 1999 was Rs.25,000/-. There is evidence before the Tribunal that the claimant would require replacement of artificial limb, once in 4 to 5 years, and therefore, the claimant must necessarily be compensated towards future medical expenses. Taking into consideration the increase in cost of the artificial limb and the expenses incurred for fixing the artificial limb, the Apex Court awarded future medical expenses of Rs.1,00,000/- and directed the amount to be deposited in a Fixed Deposit. Following the decision of the Supreme Court, I am of the opinion that it would be reasonable to award Rs.1,00,000/- towards future medical expenses. The said amount is directed to be deposited in a Fixed Deposit for incurring future medical expenses.

13. In R.D.Hattangadi vs. Pest Control (India) Pvt. Ltd. and others reported in 1995 ACJ 366, the Supreme Court in paragraph 18 has held as follows :

> "18. So far the direction of the High Court regarding payment of interest at the rate of 6 per cent over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditures under different heads. It need not be pointed out that interest is to be paid over the amount which has become payable on the date of

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award and not which is to be paid for expenditures to be incurred in future. As such we direct that appellant shall not be entitled to interest over such amount."

As per the above said decision, the claimant is not entitled to interest on the award towards future medical expenses.

14. Exs.P8 and P9 are leave sanction orders, dated 01.02.1999 and 23.03.1999, respectively. Ex.P24 is the letter of the Executive Engineer, Public Works Department, Hydrology Division Trichy, dated 21.08.1998, requesting the Superintending Engineer, Public Works Department, Thanjavur to sanction three months medical leave with half-pay from 21.07.1998. Learned Counsel for the claimant submitted that the claimant has lost a considerable portion of his salary by surrendering his EL and also EOL during the period of amputation and further treatment. He submitted that but for the injury, the claimant would have received the salary. The details of EL and EOL are as follows :

"1. Earned Leave .. 114/30 x 23,300/- pm - Rs. 88,540.00
2. E.L. or PA
(46 days/2 = 23 days) .. 23/30 x 23,300/- pm - Rs. 17,863.00

Loss of total encashment - Rs.1,06,403.00

In P.Murugaiyan vs. K.Ramachandran and another (2003 ACJ 563), this Court has awarded Rs.34,600/- for loss of leave and Rs.25,000/- for future operations. In yet another decision reported in B.Anandhi vs. R.Latha and another (2002 ACJ 233), this Court in paragraph 13 has held as follows:

"13. Because of the injury sustained by him in the accident, the claimant had to be on leave for a period of four months for taking treatment. So, he was constrained to apply for leave because of this accident and the fact that he received salary for this period is not a ground to contend that the petitioner is not entitled to get compensation for loss of earning for this period."

In the light of the above decisions, the claimant would be entitled to compensation for loss of pay on surrender of Earned Leave and Medical Leave. Therefore, Rs.1,06,403/- is awarded as compensation for loss of earning.

15. Learned Counsel for claimant submitted that due to amputation of his leg, he had engaged a vehicle to attend to his office till his retirement, i.e., till 31.01.2005. It is difficult for a man fitted with an artificial limb to use a public transport vehicle for commuting from his residence to office and one can presume that he would have used a vehicle to attend his office till his retirement. It would be appropriate to award Rs.25,000/- as additional transportation expenses. The award under other heads remain unaltered.

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16. The award passed by the Tribunal is enhanced and the claimant is entitled to compensation of Rs.3,96,403/-, as detailed below :

(i) Transportation expenses	:	Rs. 1,500.00
(ii) Extra nourishment	:	Rs. 3,500.00
(iii) Medical expenses	:	Rs. 50,000.00
(iv) Pain and suffering	:	Rs. 40,000.00
(v) Permanent disability	:	Rs. 70,000.00
(vi) Addl. Transportation expenses	:	Rs. 25,000.00
(vii) Loss of income	:	Rs. 1,06,403.00
(viii) Future medical expenses	:	Rs. 1,00,000.00
Total	:	Rs.3,96.403.00

Excepting the award under future medical expenses, the enhanced compensation shall carry an interest at the rate of 7.5% per annum. The Transport Corporation is directed to deposit the enhanced compensation with interest as indicated above within a period of two months from the date of receipt of a copy of this order.

In the result, C.M.A.No.145 of 2001 filed by the claimant is allowed. C.M.A.No.868 of 2001 filed by the Transport Corporation is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Motor Accidents Claims Tribunal (Principal Sub Judge),
   Mayiladuthurai.

2. The Section Officer, V.R.Section,
   High Court of Madras, Chennai.

1 cc To Mr.A.Muthukumar, Advocate, SR.16814.

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